DIVISION OF DISABILITY AND ELDER SERVICES

BUREAU OF QUALITY ASSURANCE
1 WEST WILSON STREET
P O BOX 2969
MADISON WI 53701-2969

Telephone: 608-266-8481
FAX: 608-267-0352
TTY: 608-266-7376
www.dhfs.state.wi.us

Jim Doyle
Governor

Helene Nelson
Secretary

State of Wisconsin

Department of Health and Family Services

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TO: Nursing Homes — NH 07
Facilities for the Developmentally Disabled — FDD 05

FROM: Michael Steinhauer, Chief
Resident Care Review Section

VIA: Susan Schroeder, Director
Bureau of Quality Assurance

Informal Dispute Resolution (IDR) Update

OVERVIEW: This memo describes the revised procedure under which health-care facilities may work to informally resolve differences they have with citations issued by Bureau of Quality Assurance surveyors. Substantive revisions have been **bolded** on the paper version of this memo and on the internet version. This revised procedure took effect September 1, 2003.

On January 1, 1995, the Bureau of Quality Assurance (BQA) implemented a standardized process for informally resolving disagreements facilities may have with citations issued by BQA surveyor(s). Since then, we have refined this process. This memo reflects the MOST RECENT changes that have occurred.

The Informal Dispute Resolution (IDR) process has been developed with the expectation that all parties act in good faith, treat others with respect and professionalism, and recognize that there will be issues of honest disagreement.

The goals of informal dispute resolution are to ensure that the Statement of Deficiencies (SOD) and the federal and state data systems accurately identify a provider's state of compliance relative to the regulations, and to resolve differences:

- Outside of formal litigation, thereby avoiding the costs of protracted litigation (however, the process does not preclude a facility from requesting a hearing where applicable);
- In a timely manner, while the issues and facts are still fresh; and
- Prior to the entry of the survey results into the federal data system.

The process of IDR renders a *de novo* (new) look at disputed citations. The Bureau looks objectively at information gathered during the survey and information provided by the health care facility. The Bureau compares the situation to the regulatory requirements and to statewide practices. Based upon this information, and to ensure statewide consistency, the Bureau of Quality Assurance may take a variety of

actions, including the following: withdraw citations, keep citations as written, modify or withdraw examples from the citation(s), and/or lower or raise the state classification, or issue additional citations.

The process does not alter or delay the required timetables associated with licensure or certification termination or other adverse action. This informal process does not limit the legal appeals' processes that are afforded facilities under state and federal laws and regulations. Allegations of surveyor misconduct and inappropriate demeanor during the survey should not be reported under this process, but rather to the Regional Field Operations Director (RFOD).

The IDR process begins during the survey with communication between the surveyor(s) and the facility. The survey coordinator will meet with the provider on a daily, or as-needed basis, to share preliminary survey findings. Federal survey protocols dictate the information that can be shared before exit, especially if it impacts on the eventual scope or severity of a deficiency. If you think this process is not occurring during a survey, we ask that you immediately contact the Regional Field Operations Director or Field Operators Supervisor assigned to your facility. Surveyors will also meet with the provider at the exit conference to present a preliminary summary of the survey findings.

We encourage facilities to use these meetings to provide additional clarifying facts and information to surveyors so they can be considered in the final decision-making process. Facilities may also provide additional information to the survey team between the date of the exit conference and the date any deficiencies are served.

Once the SOD is received, facilities that disagree with examples, individual citations, or all the citations, may request that differences be resolved through IDR. The process may take two tracks. On one track, the facility sends its supporting documentation to the BQA IDR Coordinator designated to conduct the IDR, then meets by phone or in person to discuss the facility's points of contention. Under the other track, the assigned IDR Coordinator reviews the facility's supporting documentation, but without person-to-person discussion.

It is to everyone's benefit that the process for reviewing disputed citations occurs as quickly as possible. The facility must follow the time frames below if the provider is requesting a face-to-face meeting or telephone conference call:

(1) Timeframes and Procedures for Requesting IDR

(a) Facilities that wish to meet with BQA in person or by phone must:

(i) Request IDR by the third calendar day following receipt of the SOD (or the first working day if the due date is on a weekend or holiday).

(ii) Provide its supporting documentation to BQA by the seventh calendar day following receipt of the SOD (or the next working day if the due date is on a weekend or holiday). Unless compelling extenuating circumstances exist, if BQA receives the supporting documentation after the seventh calendar day following receipt of the SOD, the IDR will be limited to a desk review and evaluation of the facility's supporting documentation.

(b) Any request for IDR that is received between the fourth and tenth calendar day following receipt of the SOD will be honored, but the IDR will be limited to a desk review of the contested citations and the facility's supporting documentation.

(c) The initial request for IDR should be made by FAX and directed to the Southeastern Regional Office, attention: IDR Intake. (Phone and FAX numbers are listed at the end of this memo. FAX lines are available 24 hours/day). The facility is also requested to fax a copy of the request to the BQA Regional Office that manages the facility so they are aware of the pending request.

(d) The request for IDR *MUST* either be on a fully completed IDR Request Form (DDE-2514, Revised 7-03) appended to the SOD transmittal letter or include the same information specified on the request form in another written form.

(e) Upon receipt of the request for IDR, the provider will be contacted by the IDR intake staff with the name of the IDR Coordinator who has been assigned to conduct the IDR. (Addresses for each of the regional offices are listed on pages 7.) If the IDR is assigned to a Regional Field Operations Director, it will be sent to a Regional Field Operations Director from a region other than the one in which the facility is located. The Bureau will also send the initial letter advising facilities of their rights.

NOTE: The State Operations Manual allows facilities ten calendar days from receipt of the SOD, rather than three, to submit a written request for IDR and to document why they are disputing specific federal deficiencies. The CMS-2567 survey packet must be sent to the federal Centers for Medicare and Medicaid Services (CMS) within 45 days of the date of exit. This short time frame means that requests received by BQA between the fourth and tenth calendar days after receipt of the SOD will be limited to a desk review and evaluation of the material the facility has submitted to refute specific deficiencies. There will not be a face-to-face meeting or telephone conference call. The Bureau will notify the provider of the outcome of the desk review no later than the date the survey packet is sent to CMS.

(2) Submitting Information for Consideration

(a) When submitting supporting documentation to the assigned IDR Coordinator, facilities must include the following information:

- The specific reason *each* federal tag or state code is being disputed (e.g., disagreement with the tag or code that was chosen, disagreement with the state classification, availability of supporting information that disputes or further clarifies the facts, or errors in documentation on the SOD). **Reasons for dispute must be highlighted on submitted documents or a cover letter must be included detailing the points of contention, or both.**

- The desired outcome for *each* disputed federal tag and state code (e.g., withdraw the citation, change state classification, withdraw specific examples, or change federal tag or state code).

- The relevance of the documentation to the dispute. Material that does not highlight or identify specific entries to be reviewed for each disputed citation, or that does not explain the relevance of the documentation to the dispute will not be considered. The facility should explain why the material was not shown to the survey team during the discussion of survey findings.

(3) The IDR Session

(a) The type of IDR review will depend on the nature and scope of the deficiency.

- **Waived K-tags will not be subject to IDR.**
- **If IDR is requested, BQA will conduct desk reviews for federal citations at a scope and severity level of A, B, and C – Grid Level 1 citations, and state stand-alone correction orders and notations.**
- **BQA will conduct face-to-face or telephonic IDR meetings for Federal Grid Level 2, 3, and 4, and State class "A", "B", or "C" violations.**

(b) Upon request for IDR review, the IDR Coordinator will review the submitted information. In addition, he or she may seek input and review by the surveyor or survey team, the Bureau's Quality Assurance staff, the consultants in the Bureau's Provider Regulation and Quality Improvement Section, an IDR Coordinator from another region, consultant physicians, central office management, or CMS regional office program representatives.

(c) After receiving a timely request for an in-person or phone IDR, the IDR Coordinator will schedule the meeting as soon as practicable. If schedules conflict, the call or meeting will be held on a mutually agreed-upon date. The IDR Coordinator will choose the site of the IDR meeting. [It will not be possible for IDR Coordinators to continue to travel around the state for IDRs. The IDR Coordinator may conduct cases near their offices or homes, (which may allow them to conduct several cases on the same day), or they may travel to the region to conduct IDRs. BQA will allow its IDR Coordinators to meet their obligations with flexibility.]

(d) The IDR meeting will be limited to one hour, unless the IDR Coordinator agrees to an extension. The duration of the IDR will be established prior to the start of the IDR based on the number and complexity of identified issues. To make the best use of the available time, facilities are encouraged to prioritize their concerns and present new information in a succinct manner.

(e) **The IDR meeting is intended to be an open, good faith negotiation between parties who wish to resolve differences.** The purpose of this conference is to allow the facility to provide a brief overview of the material it has submitted and to answer any questions that BQA may have about the material. This is an informal meeting or phone conference. BQA staff will describe the purpose of the meeting. The provider may explain how and why it disagrees with the survey team's conclusions. The provider should be able to identify the specific parts of the Statements of Deficiencies with which it disagrees. The disagreement may be with either statement of fact or surveyor conclusions.

(f) Surveyors, BQA supervisors or others with knowledge of the survey findings (or their designees), and attorneys representing the facility, may participate in the IDR. In some cases, an ombudsman from the Board on Aging and Long-Term Care or a representative from CMS or WDHFS may request to attend an IDR. BQA will inform facilities prior to or upon convening the IDR, if an ombudsman or federal representative will be present. The IDR session shall be taped by any party wishing to do so. All participants will be notified at the start of the IDR that a tape is being made, and that a copy of the tape will be made available to those wishing a copy. A copy of the tape and its transcription, if transcribed, will be made a part of the permanent record.

(4) Post-IDR Session

(a) The Bureau of Quality Assurance will notify the facility of its decision(s) no later than 21 calendar days from the date the SOD was received by the health care facility.

(b) When changes are made to the SOD, the assigned IDR Coordinator will ask whether the facility is requesting a "clean" SOD rather than an "amended" SOD. The request for a "clean" SOD MUST be made at this time. A "clean" SOD means the original SOD is withdrawn and a second SOD is generated by the computer after the changes have been entered into the system. A facility is responsible for ensuring its Plan of Correction is transferred to the "clean" SOD. **A "clean" SOD will not be promulgated for superficial errors or minor inconsistencies in the SOD such as:**

- **A minor typographic error is found to be present;**
- **A staff, resident or surveyor identifier number is incorrect (it may be appropriate to clarify and update the identifier list), or**
- **For simple word-smithing, e.g., the facility desires language to read "rule out possible pulmonary emboli" rather than what was stated on the SOD as "rule out pulmonary emboli."**

In these cases or where a request is not made by the facility for a "clean" SOD, BQA will revise its survey findings by amending the original SOD. An amended SOD means that additions or deletions are made on the original SOD by crossing out or inserting text and noting these changes in the margin of the original SOD as being a result of IDR.

(c) For SODs alleging a Class A, B, or C violation, any appeal of the original SOD is eliminated when the original SOD is withdrawn. An appeal of the original SOD does not carry over or transfer to the "clean" SOD. The facility must file a new request for hearing if the "clean" SOD is subject to appeal and the facility wishes to appeal it.

(5) <u>Availability of IDR</u>

(a) For both nursing homes and FDDs, the availability and use of IDR:

(i) Applies to all citations issued by BQA, except waived K-tags and one other exception. It does not apply to a re-cited citation where (a) the re-cited facts are identical to the facts on the previous citation; and (b) the previous citation has already gone through IDR. (In general, this exception will apply to structural deficiencies.) For example, a facility that was re-cited for not replacing an improperly rated fire door could not request a second IDR because the situation ["the door"] remained the same. On the other hand, a facility may be able to request IDR on a re-cited activity deficiency because activities are fluid and changeable. A re-cited deficiency will have different facts because it may address different residents, different frequencies of participation, or different activities in which a resident did or did not participate.

(ii) Applies to any new citation issued as a result of IDR. A "new" citation means a deficiency or violation (a) that was not known before the IDR, because new facts were learned during the IDR; or (b) that was substantially changed as a result of IDR. A deficiency is substantially changed when facts are materially altered and the information is cited under a different federal or state regulation.

(iii) Does not prevent providers licensed under ch. HFS 132 or ch. HFS 134 from filing a formal state appeal under section 50.04(4)(e), Wis. Stats. Appeals must be made within ten calendar days of receipt of the SOD. If, as a result of IDR, a facility continues to disagree with BQA's decisions, the appealed citations will remain in dispute and may proceed to full litigation and hearing. (As stated in paragraph (4)(b) and (c) above, the issuance of a "clean" SOD results in withdrawal of the original SOD. The original appeal does not transfer automatically to the new "clean" SOD**.** A new state appeal request is required if the facility wishes to appeal the "clean" SOD.)

(iv) Does not exempt a facility from submitting an acceptable Plan of Correction for each citation, within ten calendar days from receipt of the SOD.

- An acceptable Plan of Correction must explain how correction will be accomplished for the residents identified on the SOD; how other residents who are at risk will be identified; what measures will be put into place to ensure that the deficient practice will not recur; and how the facility will monitor its corrective actions to ensure that the deficient practice is being corrected and will not recur.

- No Plan of Correction from any licensed provider may malign an individual. Failure to submit an acceptable Plan of Correction for each federal tag and state code will prompt the Bureau to initiate a recommendation for termination of the provider agreement, or revocation of state license, or both. For federally certified nursing homes, failure to submit an acceptable Plan of Correction for a federal deficiency may also lead to the imposition of alternative enforcement remedies.

(b) For federally-certified nursing homes, the IDR process cannot, in general, be used solely to challenge the scope and severity assigned to a particular citation without challenging underlying facts and examples. If underlying facts and examples change as a result of IDR, a by-product of the dispute may be a change in the scope and severity designation. Scope and severity can be directly challenged, without challenging underlying facts and examples, if a change in scope and severity will change a designation of substandard quality of care or will lower the category of a Civil Money Penalty.

If you have questions concerning IDR or if you wish to request IDR, please contact the IDR Intake desk. For all other issues related to the survey and enforcement process, please contact the appropriate Regional Field Operations Director. Contacts are listed below:

IDR REQUESTS:	Southeastern Regional Office ARFOD- IDR Intake	(414) 227-5057 FAX (414) 227-4139

CURRENT IDR COORDINATORS:

La Vern Woodford	Western Regional Office 610 Gibson Street, Ste. 1 EAU CLAIRE WI 54701	(715) 855-7311 FAX (715) 836-2535
Vicky Griffin	Southeastern Regional Office 819 N. 6th Street, Room 210 MILWAUKEE WI 53203	(414) 227-4705 FAX (414) 227-4139
Jack Bornsen	Western Regional Office 610 Gibson Street, Ste. 1 EAU CLAIRE WI 54701	(715) 836-6748 FAX (715) 836-2535

REGIONAL FIELD OPERATIONS DIRECTORS (RFODs)/IDR COORDINATORS

Dolores Zwiers	Northeastern Regional Office 200 North Jefferson Street, Suite 211 GREEN BAY WI 54301	(920) 448-5249 FAX (920) 448-5254
Joanne Powell	Northern Regional Office 1853 N. Stevens Street, Suite B RHINELANDER WI 54501	(715) 365-2802 FAX (715) 365-2815
Pat Benesh	Southeastern Regional Office 819 N. 6th Street, Room 210 MILWAUKEE WI 53203	(414) 227-4908 FAX (414) 227-4139
Juan Flores	Southern Regional Office 2917 International Lane, Suite 210 MADISON WI 53704	(608) 243-2374 FAX (608) 243-2389
Joe Bronner	Western Regional Office 610 Gibson Street, Suite 1 EAU CLAIRE WI 54701	(715) 836-4753 FAX (715) 836-2535

Attachment: Informal Dispute Resolution – Request Form 2514 (rev. 7-03)

DEPARTMENT OF HEALTH AND FAMILY SERVICES **STATE OF WISCONSIN**
Division of Disability and Elder Services
DDE-2514 (Rev. 7-03)

REQUEST FOR INFORMAL DISPUTE RESOLUTION

The information collected on this form is used for the informal dispute resolution (IDR) process. Completion of this form is not mandatory; however, the following information must be provided, as described below, if you wish to request informal dispute resolution. If you have questions about completion of this form or the informal dispute resolution process, see BQA memo 03-013 or contact the Regional Field Operations Director.

1. Complete and FAX this form to:

IDR INTAKE
FAX (414) 227-4139

2. FAX a copy to your Bureau of Quality Assurance Regional Office.

3. SUPPORTING DOCUMENTATION must be forwarded, to the individual assigned to conduct the IDR, **within seven (7) days of receipt of the Statement of Deficiencies**.

Name – Facility		Date Request Submitted	Facility License No.
Facility Mailing Address		Federal SOD Number	State SOD Number
City	Zip Code	Event ID Number	Date SOD Received
Contact Person		Telephone Number	

Type of Review Requested	Will the Provider's Legal Counsel be Involved in the IDR process?	Location of BQA Regional Office
☐ Telephone ☐ In-Person ☐ Desk Review	☐ Yes ☐ No	☐ Eau Claire ☐ Green Bay ☐ Madison ☐ Milwaukee ☐ Rhinelander

ENTER THE DISPUTED FEDERAL AND STATE TAGS OR CODES AND THE REASON FOR REQUESTING IDR (FROM FOLLOWING LIST) IN THE SPACE BELOW

01 Errors in Citation Details
02 Incorrect Scope
03 Incorrect Severity
04 Wrong Tag / Code
05 New Information Available
06 Code Interpretation
07 Other (Explain)

Tag / Code	Reason for IDR	Tag / Code	Reason for IDR